Testimony of Lorray S.C. Brown
On Behalf of the Michigan Advocacy Project (MAP)
On House Bill 4834 - Deferred Presentment Service Transactions Act
House Committee on Banking and Financial Services

Good morning Chairman Robertson and members of the House Committee on Banking and Financial Services. Thank you for the opportunity to testify today regarding House Bill 4834. I am Lorray Brown, the consumer law attorney at Michigan Poverty Law Program. Michigan Poverty Law Program is the statewide back-up center for legal services programs. I am here today on behalf of the Michigan Advocacy Project. The Michigan Advocacy Project (MAP) is a joint project between the Michigan League for Human Services (MLHS) and the Michigan Poverty Law Program (MPLP). MAP advocates on behalf of the state's low-income population on issues in the areas of low-income housing, family law, consumer protections, and issues affecting the elderly.

We support the effort to ensure that the payday lending industry does not continue its practices without being regulated. However, the payday lending industry is already regulated by existing laws of this state, such as the Regulatory Loan Act and the Credit Reform Act. The payday lending industry has simply refused to abide by the Credit Reform Act by claiming that such lenders do not make loans but rather "deferred presentment services". Whether they are called "deferred presentment" "cash advances" or "deferred deposits" they are simply loans. In fact, in an April 25, 1995 declaratory ruling, the Michigan Financial Institutions Bureau announced that a check cashing company that cashes a customer's check and agrees to delay presentment for payment of that check to the customer's bank until the customer's next payday is engaged in the making of a loan. That check cashing company is subject to the Regulatory Loan Act and the Credit Reform Act. There is no reason why the payday industry should be treated differently from other lenders who make short term loans in Michigan and are regulated under the Regulatory Loan Act and the Credit Reform Act.

This legislature can best protect and promote the consumers' interests by simply affirming that the payday lending industry must comply with Michigan law as authorized by the Credit Reform Act. At the very least, House Bill 4834 should be consistent with the Credit Reform Act. However, if the payday lending industry will be treated differently, we have strong concerns about the effects that some provisions of House Bill 4834 will have on low-income working families.

First, section 33(1) of the bill attempts to obfuscate the issue of whether payday lenders are making loans and thereby charging interest. Section 33 states that the service fee for each transaction is not interest. This is contrary to the 1995 declaratory ruling of the Michigan Financial Institutions Bureau (FIB). In 1995, the commissioner of FIB specifically found that a fee paid for the delay in payment of money is interest as used in the Regulatory Loan Act.

Additionally, courts that have addressed this question have held that the payday lenders' charges constituted "interest" not "service fees". See Hamilton v York d/b/a HLT Check Exchange, 987 F Supp 953, 955-57 (E.D. Kentucky 1997); Turner v E-Z Check Cashing, 35 F

Supp 2d 1042, 1047-49 (M.D. Tennessee 1999). Specifically, the Hamilton court, in examining the deferred presentment transactions, noted that "[i]t is hard to imagine how charges for exchanging money today for more money at a later date could be classified as anything but interest on a loan . . . ." See Hamilton, 987 F Supp at 956 n 4; Turner, 35 F Supp 2d at 1048.

Similarly, in 2000, the Attorney General of Indiana issued an opinion declaring that the fees charged by payday lenders are interest. According to the Indiana Attorney General "[p]ayday lenders cannot avoid Indiana's loansharking statute by referring to their charge as a 'service fee' rather than interest."

It is important to look at the substance of these payday lending transactions as opposed to the form. Just because the payday lenders call the charge a "service fee" or a "transaction fee" does not make it so. The payday lenders are charging a fee for short-term loans. These fees are clearly being paid for the delay in payment of money. Thus, they should be considered interest. Accordingly, the payday lenders should be subject to the Regulatory Loan Act and the Credit Reform Act.

Notwithstanding, section 33 also proposes that payday lenders be permitted to assess a 15% service fee for each loan transaction. This 15% service fee far exceeds the 2% processing fee required under the Credit Reform Act. Additionally, this 15% service fee per transaction also far exceeds the 25% interest per annum allowed by the Credit Reform Act. For example, under section 33, for a transaction completed in a week, the annual percentage rate (APR) would be 780%; for a transaction completed in two weeks, the APR would be 390%; and for a transaction completed in one month, the APR would be 180%.

We propose a more consistent legislative approach for this section, which makes payday lenders subject to a cap on fees and interest. We suggest that total fees and interest for any such loan be capped at 10% of the loan principal. The transaction period should be limited to no less than thirty days. As a result, under the 10% cap, for a transaction completed in one month, the APR would be 120%. This is far beyond the 25% interest per annum allowed by the Credit Reform Act. However, not only would this be a more favorable rate for consumers, it also would still make the business profitable for the payday lending industry.

Finally, we are deeply concerned that there is no private right of action in this bill. There are no civil remedies for violations of the provisions of the bill comparable to those contained in the Credit Reform Act. The Credit Reform Act authorizes a borrower to bring a civil action to obtain a declaratory judgment or to enjoin a lender's unlawful practice. Allowing a private right of action will make the bill fairer since section 38, allows a payday lender to exercise any civil remedy against the consumer to collect on a return check.

In conclusion, a better, fairer, and more consistent legislative approach would be to make payday lenders subject to the Regulatory Loan Act and the Credit Reform Act. Thank you for your time and consideration.

Prepared for:
House Committee on Banking and Financial Services Hearing - June 14, 2005